Court of Appeals, State of Michigan

ORDER

People of MI v Wendell Alan Racette

Docket No. 314895

LC No. 11-000182-FC

Patrick M. Meter
Presiding Judge

Peter D. O'Connell

Donald S. Owens
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The motion to compel compliance with remand order and for remand to a different judge is also GRANTED. The trial court plainly failed to comply with this Court's September 19, 2013 order remanding this case and entitling defendant to have an evidentiary hearing. See, e.g., *Sumner v General Motors Corp*, 245 Mich App 653, 661; 633 NW2d 1 (2001) (ruling by this Court binds trial court on remand). We again REMAND this case to the Ingham Circuit Court and direct that the circuit court clerk's office is to appropriately assign this matter to a different circuit judge than the circuit judge who signed the October 21, 2013 circuit court order in this case. That newly-assigned judge is to preside at the required evidentiary hearing and decide defendant's motion for a new trial. We conclude that this reassignment is warranted for the appearance of justice in light of the original trial judge's apparent difficulty in appropriately following the directives of this Court regarding this matter. See *Bayati v Bayati*, 264 Mich App 595, 602; 691 NW2d 812 (2004).

Defendant shall take appropriate action in the circuit court to schedule an evidentiary hearing before a different circuit judge within 14 days of the Clerk's certification of this order. We retain jurisdiction and the time for proceeding with the appeal in this Court shall begin to run upon issuance of an order in the trial court that disposes of the remand proceedings. Defendant shall file with this Court a copy of any additional pleading filed in the trial court within 14 days after the Clerk's certification of this order. Defendant shall also file with the Clerk of this Court copies of all orders within 56 days of the Clerk's certification of this order. The trial court shall make findings of fact and a determination on the record. Defendant shall cause a transcript of any further hearing on remand to be prepared and filed within 21 days after completion of the proceedings.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 08 2013

Date

Chief Clerk